Supreme Court, U.S.

99 773 SEP 1 - 1999

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No.

CASIMER J. DLUGOSZ,
Petitioner,

against

JERRY J. SCARANO, as Saratoga County Court Judge & COUNTY OF SARATOGA,
Respondents.

CERTIORARI TO THE NEW YORK COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

ROBERT J. KRZYS
Attorney for Petitioner
107 Division Street
Amsterdam, New York
12010
Telephone: (518)
842-3795

QUESTIONS PRESENTED FOR REVIEW

1. Did the courts below violate the V & XIV Amendments to the United States Constitution in permitting or approving the procedures employed against the petitioner's Pistol Permit rights and Pistol Permit license?

2. Was petitioner entitled to a postdeprivation - in-court Hearing on controverted issues which were raised, as requested and re-requested, but denied, which such postdeprivation - in-court Hearing would have afforded to him commonly accepted principles of substantative and procedural due process?

3. Have the courts below committed reversible error in failing to follow the decisional law of this court in

addressing substantative and procedural due process rights under the V & XIV Amendments to the United States Constitution?

PARTIES TO THE PROCEEDING

A list of all parties to the proceeding in the court whose Judgment is sought to be reviewed are CASIMER J. DLUGOSZ, as petitioner, and JERRY J. SCARANO, Saratoga County Court Judge & COUNTY OF SARATOGA, respondents. Said petitioner and respondents were the original parties to the proceeding when it was commenced, and there have been no parties either added to or deleted from this proceeding from the date of its commencement.

TABLE OF CONTENTS

	Page
Questions Presented for Review.....	(i)
Parties to the Proceeding.....	(iii)
Tables of Contents.....	(iv)
Table of Authorities.....	(vi)
Citations to Opinions Below and Jurisdiction.....	1
Constitutional and Statutory Provisions Involved.....	2
Statement of the Case.....	6
Argument	
The denial to petitioner of a postdeprivation - in-court Hearing on his Pistol Permit rights and Pistol Permit license violated commonly accepted principles of substantative and procedural due process under the V & XIV Amendments to the United States Constitution.....	16
Conclusion.....	29

Appendix

Page

Order of New York Court of Appeals denying Permission to Appeal..... A 1

Memorandum & Judgment of New York Supreme Court, Appellate Division, Third Department confirming Determination and Dismissing Petition..... A 2

Order of Respondent, Judge Scarano, revoking Pistol Permit **after denying** on two or more occasions, an in-court Hearing thereon..... A 8

TABLE OF AUTHORITIES

	Page
Constitution.	
United States Constitution, V Amendment.....	i, ii, 2, 14, 16, 19, 26, 28, 30
United States Constitution, XIV Amendment.....	i, ii, 3, 14, 16, 19, 26, 28, 30
Statute Citations.	
28 USC 1257.....	2
Supreme Court Rules 10,12,13 & 14.	2
28 USC 2106.....	2
New York Penal Law §400.00.....	4
New York Criminal Procedure Law §170.55.....	4, 11, 19
Case Citations.	
Armstrong v. Manzo 380 US 545; 85 S.Ct. 1187.....	20
Cleveland Bd. of Educ. v. Loudermill 470 US 532; 105 S.Ct. 1487.....	26

Case Citations.

	Page
Goldberg v. Kelly 397 US 254; 90 S.Ct. 1011.....	22
Hudson v. Palmer 468 US 517; 104 S.Ct. 3194.....	24
Logan v. Zimmerman Brush Co. 455 US 422; 102 S.Ct. 1148.....	24
Mathews v. Eldridge 424 US 319; 96 S.Ct. 893.....	21
McKesson v. Div. of Alcoholic Beverages 496 US 18; 110 S.Ct. 2283.....	26
Parham v. J. R. 442 US 584; 99 S.Ct. 2493.....	25
Parratt v. Taylor 451 US 527; 101 S.Ct. 1908.....	20
Zinermon v. Burch 494 US 115; 110 S.Ct. 975.....	27

CITATIONS TO OPINIONS BELOW

The Memoranda & Judgment of the New York Supreme Court, Appellate Division, Third Department is reported at 255 AD2d 747. The Order of the New York Court of Appeals denying leave or permission to appeal is reported at 93 NY2d 809.

JURISDICTION

This Petition for a Writ of Certiorari seeks to have permission granted to appeal to this court from the Memoranda & Judgment of the New York Supreme Court, Appellate Division, Third Department which approved a post-deprivation procedure absent any Hearing for the taking of any testimony, although requested and re-requested a number of times, therein confirming a determination to revoke the Pistol

Permit rights and Pistol Permit license of petitioner. The jurisdiction upon which this Petition is filed is made pursuant to 28 USC 1257; 28 USC 2106 and Rules 10(1)(b)&(c), 12, 13 and 14 of this court. This proceeding seeks appellate review of various Federal constitutional questions affecting a citizen's rights under the V & XIV Amendments to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

The V Amendment to the United States Constitution guarantees to a citizen that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in causes arising in the land or naval

forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The XIV Amendment to the United States Constitution guarantees to a citizen that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

United States Statutes

None.

State Statutes

The New York Penal Law §400.00 entitled "Licenses to carry, possess, repair and dispose of firearms" governs the procedure by which individuals may apply for and receive Pistol Permits in New York State and the rights and obligations attendant thereto.

The New York Criminal Procedure Law §170.55 entitled "Adjournment in contemplation of dismissal" provides a procedure by which an individual who is charged with an offense can be afforded

an adjournment in contemplation of dismissal, with the consent of a District Attorney, which would hold in abeyance the accusatory instrument for a period of six months, and upon the completion of that six month time period, if not restored to the court calendar, a dismissal in the furtherance of justice would result. That section of the Criminal Procedure Law contains a further provision which states "the granting of an adjournment in contemplation of dismissal shall not be deemed to be a conviction or an admission of guilt. No person shall suffer any disability or forfeiture as a result of such an order. Upon dismissal of the accusatory instrument pursuant to this section, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of

law, to the status he occupied before his arrest and prosecution.

STATEMENT OF THE CASE

During April, 1978, petitioner made application for a Pistol Permit. At that time he resided in Schenectady County, State of New York, and the Pistol Permit application was reviewed and passed upon by the late HON. GEORGE W. STROEBEL, JR., Schenectady County Court Judge and as Licensing Officer for the issuance of Pistol Permits. At that time, as well as at present, petitioner was self-employed and sold restaurant equipment. In his application he stated that his employment in that capacity caused him to carry large sums of money on his person due to irregular work hours, and that the Pistol Permit was needed for protection.

At the time of the application as well as the present time, petitioner **had never** been convicted of a crime. Over the years, while he may have been charged with offenses, all of same had been controverted, and upon such controversy having been presented in court, all of those charges were either withdrawn, dismissed, not prosecuted, etc. From 1975 through 1998, he had but one conviction, same being for a parking offense under the New York State Vehicle and Traffic Law. Over that 19+ year time period petitioner never transgressed the trust afforded to him by JUDGE STROEBEL in issuing the Pistol Permit and until the underlying case was commenced, sua sponte, he fully respected his Pistol Permit privileges without even an indicia of misconduct.

On August 2, 1997 one PHILIP A. PANELLA, JR., made an accusation against petitioner charging him with the crime of Assault in the Third Degree. That allegation as made was embodied in an accusatory instrument/Information filed in the Town Court of the Town of Colonie, State of New York. Upon that filing occurring, inquiry was made to petitioner by HON. MICHAEL C. EIDENS, Schenectady County Court Judge and Licensing Officer for the issuance of Pistol Permits, which was duly responded to. Given a change of address, the proceeding as initially inquired about by JUDGE EIDENS was transferred to the respondent, JERRY J. SCARANO, Saratoga County Court Judge & as Licensing Officer for the issuance of Pistol Permits in the County of Saratoga, State of New York.

Upon transfer occurring, JUDGE SCARANO began making a number of inquiries, on his own, to third persons, some of which were never responded to and **were never** disclosed to petitioner. Although not responded to, formally or otherwise, JUDGE SCARANO equated the making or bringing of a charge without any adjudication of guilt, to be the equivalent of misconduct, and thereafter proceeded to revoke the Pistol Permit. In doing so, all which was ever afforded to petitioner was to present to the court in writing his own version of the events. Although petitioner did so and vehemently denied any wrongdoing or misconduct, whatever information JUDGE SCARANO had gleaned from his own inquiries and had never been imparted to petitioner, was used against petitioner without any right to

challenge the reliability or credibility of same. In sum and substance, whatever JUDGE SCARANO acted upon, sua sponte, was kept secret and never disclosed to petitioner, and somehow used adversely against him.

It is important to note that no Hearing was conducted, no proof or testimony was taken, and in fact, JUDGE SCARANO never even met petitioner. Somehow, he opined that his role was to review paperwork, secret or otherwise, request letter explanations, and then act. Even then, although controverted, he adamantly refused to afford to petitioner a Hearing, either pre-determination or postdetermination, notwithstanding that same was requested and re-requested a number of times. As ultimately came to pass, the Pistol Permit rights and Pistol Permit license

of petitioner was revoked, without any in-court proceeding, witnesses being called, proof being taken, Exhibits being offered, etc.

The original charge of Assault in the Third Degree which precipitated the initial inquiry as was filed in the Town Court of the Town of Colonie, State of New York, was scheduled for trial, but on the trial date, for whatever reasons underlied same, the charge was adjourned in contemplation of dismissal pursuant to CPL 170.55, which was implemented on April 13, 1998, and made fully and finally effective on October 13, 1998. Although petitioner was prepared to proceed to trial in the Colonie Town Court, had subpoenaed witnesses and was intent on defending himself against the charge laid, thereby asserting his innocence and presenting

whatever proof would be necessary to a jury ultimately selected, given the adjournment in contemplation of dismissal, same was not necessary. Petitioner verily believed and asserted his innocence, at all times, and stated that the accusatory instrument/Information which was filed against him was false and fraudulent. By reason of the adjournment in contemplation of dismissal and the ruling that petitioner was not entitled to any postdeprivation Hearing, the true facts and any testimony concerning the events of August 2, 1997 were never heard in any court of law.

It appears that respondent, JUDGE SCARANO acted solely upon a filed accusatory instrument which truly had no probative evidence of guilt. It was only an accusation, and without any trial, there was no proof, no Hearing,

no conviction, no Exhibits, but still, the unproven charge which initiated the inquiry somehow led to the revocation of a longstanding and scrupulously honored Pistol Permit privilege and license held by petitioner. That, it is submitted, was in error, in violation of the laws of the State of New York, basic constitutional principles, which should have been annulled and set aside, either with the direction that the Pistol Permit be reinstated, or at a minimum, petitioner be afforded a post-deprivation Hearing thereon, before a different and impartial Judge.

When the Pistol Permit privilege and license was revoked, challenge was made thereto by commencing a Special Proceeding in the New York Supreme Court, Appellate Division, Third Department. Once filed, briefed and orally argued,

that court sitting as a Trial Court approved of the procedure implemented, absent a Hearing or absent any entitlement to a Hearing, therein confirming the determination and dismissing the Petition. An application was made to the New York Court of Appeals for review, on constitutional grounds, that application was dismissed, sua sponte, the court stating that a **substantial constitutional right** was not involved, 93 NY2d 847. Thereafter, an application was made for discretionary review, through a grant of permission, which was denied on June 3, 1999.

The petitioner believes and submits that the V & XIV Amendments to the United States Constitution and the decisional law of this court supports an entitlement to an in-court Hearing, of some type, wherein proof was pre-

sented, same constituting a post-deprivation Hearing, and the failure of the courts below to afford same to him constituted a grievous violation of his constitutional rights which should now be reviewed and upon review, reversed by this court. He seeks, by Order of this court, either an outright reversal of the revocation of the Pistol Permit, especially so, with the adjournment in contemplation of dismissal now in place and having taken effect; or alternatively, reversal and a remand to the New York State Courts by which a postdeprivation Hearing in accord with constitutional principles would be allowed.

ARGUMENT

THE DENIAL TO PETITIONER OF A POSTDEPRIVATION - IN-COURT HEARING ON HIS PISTOL PERMIT RIGHTS AND PISTOL PERMIT LICENSE VIOLATED COMMONLY ACCEPTED PRINCIPLES OF SUBSTANTATIVE AND PROCEDURAL DUE PROCESS UNDER THE V & XIV AMENDMENTS TO THE UNITED STATES CONSTITUTION.

In any type of litigation conducted in this Country and in this State, every litigant is entitled to be afforded the principle of fundamental fairness, to be accorded due process of law, and when accusations are made, to have a right to controvert same and to confront one's accusers. All of those basic fundamental and constitutional principles guaranteed to petitioner under and by virtue of the V & XIV Amendments to the United States Constitution were denied to him by respondents.

There truly was no fundamental fairness accorded to petitioner, for no one ever came forward and made allegations against him, which were ever proven, so as to warrant the penalty of a loss of property in the form of the sanction of revocation of a Pistol Permit. In this argument, one may ask, what is due process of law? Is it not the right to be heard in open court and to have the fact-finder determine what version of an underlying incident is correct and entitled to credibility? Here, that never occurred. There was no Hearing scheduled. There were no witnesses ever called. If an investigation occurred, it was done secretly by respondent, JUDGE SCARANO, outside of the knowledge of petitioner. What was done was to equate a charge contained in an

accusatory instrument/Information, with misconduct, notwithstanding the fact that same was never proven, established or that any adverse adjudication resulted. In utilizing that procedure as adopted by the courts below, petitioner was denied both substantative and procedural due process of law.

One of the most fundamental concepts in American Jurisprudence is the right of confrontation. Whether it is the government or a private person who makes the accusation, civil or criminal, proof must be presented, and then, that proof must satisfy necessary elements as well as credibility determinations. Through cross-examination and the confronting of witnesses, whatever may have been the true facts are then gleaned. Here, that never

occurred. Respondent, JUDGE SCARANO equated the filing of an accusatory instrument/Information which has now been dismissed in the furtherance of justice, pursuant to Criminal Procedure Law §170.55(8), with guilt or misconduct, and revoked the Pistol Permit rights and Pistol Permit license of petitioner. In doing so, the right of confrontation was denied to petitioner.

On a number of past occasions, this court has had the opportunity to review this very issue of substantative and procedural due process in a post-deprivation Hearing setting, and a review of that case law and the opinions of the Justices of this court will clearly show that the V & XIV Amendments to the United States Constitution were violated by respondents. The

court's attention is respectfully directed to the following:

In Parratt v. Taylor, 451 US 527 at 540-42; 101 S.Ct. 1908 at 1915-17, this court held that some kind of a Hearing is required at some specific time before a State finally deprives a person of his property interests. The fundamental requirement of due process is the opportunity to be heard which was stated as being an "opportunity which must be granted at a meaningful time and in a meaningful manner". Here, the courts below denied to petitioner the rights guaranteed by that decisional law authority.

In Armstrong v. Manzo, 380 US 545 at 552; 85 S.Ct. 1187 at 1191, it was held that the fundamental requirement of due process is 'the opportunity to be

heard'....It is an opportunity which must be granted at a meaningful time and in a meaningful manner. Again, that constitutional guarantee was denied to petitioner by the courts below.

In Mathews v. Eldridge, 424 US 319 at 333 & 344-45; 96 S.Ct. 893 at 902 & 907-08, it was held that some form of a Hearing is required before an individual is finally deprived of a property interest. "This is a principle basic to our society", specifically, to be heard at a meaningful time and in a meaningful manner. This court went on to recite in that Decision that surely, credibility and veracity may be a factor in the ultimate....assessment in some cases; that procedural due process rules are shaped by the risk of error inherent in the truthfinding process as

applied to the generality of case, not the rare exception; and that written submissions were an inadequate substitute for oral presentation (in court) because they did not provide an effective means for the recipient to communicate his case to the decisionmaker. Written submissions were viewed by this court as an unrealistic option. Additionally, it was held that written submissions would not provide the flexibility of oral presentations or permit the recipient to mold his argument to the issues the decisionmaker appears to regard as important. Clearly, the courts below violated this well-established principle in ultimately stating that the written letters of petitioner would suffice. That was in error and directly conflicts with the holding of this court.

In Goldberg v. Kelly, 397 US 254 at 266-69; 90 S.Ct. 1011 at 1019-21, this court held that a fair Hearing was one which would provide for full administrative review and that the fundamental requisite of due process of law is the opportunity to be heard at a meaningful time and in a meaning-

ful manner. It was stated in the Decision of this court that these principles require a timely and adequate notice detailing the reasons for a proposed sanction; **and an effective opportunity to defend** by confronting any adverse witness - and by presenting one's own arguments orally. Here, that was denied to petitioner. It was stated that the opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard. This court clearly stated that **it is not enough to permit the presenting of one's position in writing.** Written submissions are inadequate for that purpose, for same do not afford the flexibility of oral presentations; they do not permit the molding of one's oral argument to the issues the decisionmaker appears to regard as important; and they do not address issues of credibility and veracity which are in issue. To omit one an opportunity to present evidence to that individual decisionmaker orally, or to confront or cross-examine adverse witnesses **is fatal to the constitutional adequacy of the procedure.** Due process of law requires an opportunity to

confront and cross-examine adverse witnesses.

In Hudson v. Palmer, 486 US 517 at 532-33; 104 S.Ct. 3194 at 3203-04, this court held that where there is a need for quick action by a State - or there is impracticability in providing a meaningful predeprivation process, so long as there is afforded a meaningful means by which to assess the propriety of the State's action at some time **after** the initial taking, due process procedural requirements will be satisfied. Here, petitioner was denied that principle embodied in this court's Decision.

In Logan v. Zimmerman Brush Co., 455 US 422; 102 S.Ct. 1148, this court held that the due process clause grants to the aggrieved party an opportunity to present its case and to have its merits fairly judged; and thus, it has become a truism that 'some sort of Hearing' is required before the owner is finally deprived of a protected

property interest. It was stated and specifically stressed that when a statutory scheme makes liability an important factor in the State's determination, the State, **may not, consistent with due process,** eliminate consideration of that factor. Putting it as plainly as possible, it was held that a State may not **finally destroy** a property interest without first affording the owner of that interest an opportunity to present his case.

In Parham v. J. R., 442 US 584 at 608-09; 99 S.Ct. 2493 at 2507-08, this court defined what type of process is constitutionally due and cannot be divorced from the nature of the ultimate Decision that is being made. It was held that where questions were essentially medical in nature and facts were plainly necessary for a proper resolution of these questions, same required proof to be presented, and that was only the first step of the process. Here, in the present case, same holds true for petitioner. The first step in the process is to determine if he ever committed any misconduct

warranting a denial of a property right. He was denied that constitutional guarantee arising under the V & XIV Amendments to the United States Constitution.

In McKesson v. Div. of Alcoholic Beverages, 496 US 18 at 32-40; 110 S.Ct. 2283 at 2247-2252, this court discussed the scope of a State's obligation to provide retrospective relief as part of its postdeprivation procedure in a tax type case. It was held that the root/requirement of the due process clause is that an individual be given an opportunity for a Hearing before he is deprived of any significant property interest. In order to satisfy due process in a taxpayer action, it was held that a State must provide the taxpayer not only with a fair opportunity to challenge the accuracy and legal validity of their obligation, but also, a clear and certain remedy - in a meaningful fashion.

In Cleveland Bd. of Educ. v. Loudermill, 470 US 532 at 538-42; 105 S.Ct. 1487 at 1491-93, this court held property interests are not created by

the Constitution, but that they are instead created by their dimensions and are defined by existing rules or understandings that stem from an independent source such as State Law. It was held that due process provides that certain substantative rights, life, liberty and property, cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substantative and procedure are distinct. It was held that an interest, once conferred, may not thereafter be deprived, without appropriate procedural safeguards. Once the due process clause applies, the question always is and remains **What process is due?** The answer to that inquiry on what type of notice and an opportunity to be heard is the root requirement of the due process clause. That is what was denied to this petitioner.

In Zinermon v. Burch, 494 US 115 at 127-32; 110 S.Ct. 975 at 984-86, this court held that due process is a flexible concept which varies with a particular situation. It was stated that the Constitution requires some kind of Hearing before a State deprives a person of life,

liberty or property. Some kind of notice and some kind of Hearing is required. Here, all of same were denied to this petitioner.

The petitioner, CASIMER J. DLUGOSZ was denied a postdeprivation Hearing, although duly requested; was denied an opportunity to confront witnesses; was denied an opportunity to present proof why allegations in an accusatory instrument/Information were not true; was denied an opportunity present issues of credibility and veracity; and was denied both substantative and procedural rights of due process guaranteed to him by the V & XIV Amendments to the United States Constitution. He was only permitted to write letters to the court, wherein he expressed or explained his innocence, which such letter-writing this court has found to be non-compliant with due process principles. In consequence thereof, a valuable property right which he had, that being the possession of a 19+ year Pistol Permit license was revoked. Although the revocation actually did constitute a predeprivation event, certainly,

the decisional law of this court required a postdeprivation Hearing in accord with some semblance of fundamental fairness and due process of law. A failure of the courts below to recognize this and direct same to occur, constituted a grevious violation of constitutional rights.

The issues presented in this Petition are such that same are believed to be susceptible to a summary determination, i.e., that the Memoranda & Judgment and the Order of the two Appellate Courts below be reversed, with a direction that the Pistol Permit license be restored; or alternatively, that same be reversed with a direction that a Hearing be directed, before an alternate or substitute County Court Judge and Licensing Officer for the issuance of Pistol Permits in the County of Saratoga, State of New York.

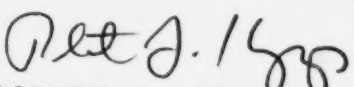
CONCLUSION

A PETITION REQUESTING A WRIT OF CERTIORARI SHOULD BE GRANTED; THE ORDER OF THE NEW YORK COURT OF APPEALS AND THE MEMORANDA & JUDGMENT OF THE NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT, REVERSED; THE PISTOL PERMIT

PRIVILEGE AND PISTOL PERMIT LICENSE OF PETITIONER RESTORED; OR ALTERNATIVELY, THERE SHOULD BE GRANTED A REVERSAL AND REMAND TO THE COURTS BELOW, BEFORE A SUBSTITUTE COUNTY COURT JUDGE AND LICENSING OFFICER, FOR THE CONDUCTING OF THE POST-DEPRIVATION HEARING WHICH PETITIONER BELIEVES HE IS ENTITLED TO BE AFFORDED UNDER PRINCIPLES OF SUBSTANTATIVE AND PROCEDURAL DUE PROCESS ARISING UNDER THE V & XIV AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Dated: October 30, 1999

Respectfully submitted,



ROBERT J. KRZYS

Attorney for Petitioner
107 Division Street
Amsterdam, New York 12010
Telephone (518) 842-3795

Order denying Leave to Appeal
to the Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the third day of June, One Thousand Nine Hundred and Ninety-nine.

PRESENT:

HONORABLE JUDITH S. KAYE,
Chief Judge.

CASIMER J. DLUGOSZ,
Petitioner-Appellant,

-v.-

JERRY J. SCARANO, as Saratoga County Court Judge & COUNTY OF SARATOGA,
Respondents-Appellees.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

/s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

Memorandum & Judgment Confirming
Determination and Dismissing Petition

NEW YORK SUPREME COURT
APPELLATE DIVISION
THIRD DEPARTMENT

Decided and
Entered: November 12, 1998 81884

CASIMER J. DLUGOSZ,

Petitioner,

-against-

JERRY J. SCARANO, as Saratoga County Court Judge & COUNTY OF SARATOGA,

Respondents.

Calendar Date: September 11, 1998

Before: Cardona, P.J., Mikoll, Mercure, Peters and Carpinello, JJ.

Robert J. Krzys, Amsterdam, for petitioner.

Dennis C. Vacco, Attorney-General (Alicia R. Ouellette of counsel), Albany, for respondents.

Carpinello, J.

Proceeding pursuant to CPLR article 78 (initiated in this court pursuant to CPLR 506[b][1]), to review,

inter alia, a determination of respondent Saratoga County Judge which revoked petitioner's pistol permit.

Petitioner was arrested and charged with assault in the third degree in August, 1997. Thereafter, the State Division of Criminal Justice Services notified the Schenectady County Sheriff's Department of the arrest presumably because petitioner's 1978 pistol permit had been issued in that county. The matter was then transferred to Saratoga County, where petitioner currently resides. Respondent Saratoga County Judge (hereinafter respondent) reviewed information regarding the August, 1997 incident, as well as a letter from petitioner's attorney which explained that petitioner had injured the complainant in self-defense. Respondent contacted petitioner and requested additional information re-

garding other arrests in October, 1996 and July, 1997 on charges of harassment. Exculpatory explanations for these arrests were also provided. After reviewing petitioner's police records, including additional 1975 and 1976 arrests for resisting arrest, driving while intoxicated, petit larceny and assault, respondent revoked petitioner's pistol permit "based on [petitioner's] general course of conduct".

Respondent denied petitioner's subsequent request for a formal hearing, but agreed to review any additional materials petitioner chose to submit. Petitioner then submitted a letter detailing the facts underlying each of his arrests. Petitioner initiated this CPLR article 78 proceeding after respondent adhered to its determination to revoke his pistol permit.

We reject petitioner's contention that respondent erred in not conducting an evidentiary hearing before rendering a determination. It is well settled that a formal hearing is not required prior to the revocation of a pistol permit as long as the licensee is given notice of the charges and has an adequate opportunity to submit proof in response (see, Matter of Gordon v LaCava, 203 AD2d 290, 290-291; Matter of Guida v Dier, 54 AD2d 86, 88). Here, petitioner was afforded several such opportunities and, upon review of the record, we conclude that respondent did not abuse his broad discretion or act in an arbitrary and capricious manner (see, Matter of Brookman v Dahaher, 234 AD2d 615, 616; Matter of Eddy v Kirk, 195 AD2d 1009, 1010, affd 83 NY2d 919).

Although petitioner relies on the fact that none of his arrests except one resulted in a conviction, this factor is not dispositive (see, Matter of County of Westchester v D'Ambrosio, 244 AD2d 334, 335; see also, Matter of Demyan v Monroe, 108 AD2d 1004, 1005). Notably, petitioner admits much of the underlying conduct for the arrests, but assigns most of the blame for provocation to others. Even accepting petitioner's explanations as true, the arrests demonstrate a repeated inability to resolve conflicts in a nonviolent manner or without police intervention. Accordingly, we find no reason to disturb respondent's determination.

We have examined petitioner's remaining contentions and find them to be unpersuasive.

Cardona, P.J., Mikoll, Mercure and Peters, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:

/s/ Michael J. Novack

Michael J. Novack
Clerk of the Court

A 8

Order Revoking Pistol Permit

STATE OF NEW YORK COUNTY OF SARATOGA

IN THE MATTER OF

CASIMER J. DLUGOSZ

THE HOLDER OF LICENSE # C-20778-TRA TO CARRY WEAPONS. ON THE RECOMMENDATION OF Hon. Jerry J. Scarano, Jr., County Judge, SARATOGA COUNTY, AND IT APPEARING TO ME, LICENSE # _____ ISSUED ON 07-27-78 TO Casimer J. Dlugosz RESIDING AT One Ridge Court, Saratoga Springs, NY TO CARRY WEAPONS, NAMELY THE FOLLOWING: S&W 38 Ser#J536925 Hi Std 22 D21353 S&W 44 N66693 SHOULD BE REVOKED AND SAID WEAPONS BE DELIVERED TO THE PROPER POLICE AUTHORITIES.

ORDERED THAT, LICENSE # C-20778-TRA ISSUED ON 07-27-78 TO SAID Casimer J. Dlugosz, BE AND THE SAME HEREBY IS REVOKED, AND IT IS FURTHER

ORDERED, THAT SAID LICENSE # C-20778-TRA AND THE WEAPONS COVERED BY IT AS AFORESAID, BE DELIVERED TO THE PROPER AUTHORITIES.

DATED: November 24, 1997
BALLSTON SPA, NEW YORK

/s/ Jerry J. Scarano, Jr.
JERRY J. SCARANO, JR.
SARATOGA COUNTY COURT JUDGE